

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
HADASSAH HUBBARD CARTER,
Plaintiff,

v.

Case No: CL19-4150-2

VIRGINIA REAL ESTATE BOARD,
Defendant. Jury Trial Demanded

[Serve: Jay DeBoer
Executive Officer
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233]

COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff, Hadassah Hubbard Carter, by counsel, moves This Honorable Court to make binding adjudications of rights against the Defendant, and as grounds therefore, respectfully avers as follows:

Introduction

1. This action raises Virginia State Constitutional claims under Article One, Sections Eleven, Twelve, and Sixteen as well as federal questions under the First and Fourteenth Amendments to the United States Constitution.

2. Virginia's Fair Housing Code § 36-96.3(A)(3) states in relevant part, with emphasis added:

It shall be an unlawful discriminatory housing practice for any person: . . . To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap. *The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer.* However, reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference.

3. The sentence in Code Section 36-96.3(A)(3) that declares that “[t]he use of words or symbols associated with a particular religion, national origin, sex, or race shall be *prima facie* evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer” (hereafter “the presumption”) chills realtors’ protected speech by requiring the removal of all religious statements or material on any of their communications, websites, and advertising material.

4. The presumption of Code Section 36-96.3(A)(3), and Defendant’s policies and actions concerning the presumption, are challenged on their face and as applied to Plaintiff Hadassah Hubbard Carter.

5. Defendant’s policies and actions, and the enforcement and threatened enforcement of Code Section 36-96.3(A)(3), have violated Plaintiff Hadassah Hubbard Carter’s rights under the Virginia and United States Constitutions as well as Virginia Code § 57-2.02.

Statement of Facts

6. At all material times, Hadassah Hubbard Carter (“Ms. Carter” or “Plaintiff”) was a licensed real estate agent in good standing.

7. At all material times, Kathleen C. Edwards (“Edwards”) was a licensed real estate broker in good standing and was employed by Midlothian Partners, LLC. (“Midlothian”).

8. At all material times, Ms. Carter acted as an agent for Edwards.

9. Ms. Carter is a Christian. During the course of her realty practice, she has included some religious content in her email signature and on her website as a means of expressing her faith.

10. Ms. Carter’s religious expression did not indicate any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination based on

religion.

11. On or about August 2, 2017, Ms. Carter emailed the Virginia Real Estate Board (“VREB” or “Defendant”) regarding a complaint that she had assisted a client to file against a third party.

12. On August 17, 2017, the VREB filed a complaint (“Defendant’s Complaint,” attached as **Exhibit A**), against Ms. Carter for allegedly violating Virginia’s Fair Housing Act.

13. The Defendant’s Complaint cited the following as allegedly unlawful speech:

- a. Ms. Carter’s email signature line, which reads, “For Faith and Freedom, Jesus loves you, and with God all things are possible.”
- b. Ms. Carter’s Personal Statement on her business website, which read, “For God so loved the world that He gave his only begotten Son, that whosoever believeth in Him should not perish but have everlasting life.’ John 3:16[.] I am available to you when you need me.”
- c. Ms. Carter’s Bio and statement of Core Values on her business website, which speak of Ms. Carter’s belief that God has blessed her in her profession (which she describes as a ministry), her goal of operating according to the “Golden Rule,” and her commitment to putting “God . . . first,” (adding “[E]qual to Him, my Clients come first”), among other religiously-colored statements that reflect Ms. Carter’s care for her clients.

14. The Complaint alleged Ms. Carter’s use of “words or statements associated with Christianity, indicating a preference or limitation based on religion, in violation of the Virginia Fair Housing Law.”

15. Ms. Carter and her counsel sought to resolve the issues set forth in the Complaint.

16. During conciliation discussions, the VREB refused to permit Ms. Carter to make any religious statements on her business website, her email signature, or anywhere else.
17. Ms. Edwards required that Ms. Carter remove all religious statements from her business website and email signature while the complaint was pending.
18. The VREB questioned Ms. Carter on October 2, 2017.
19. The VREB did not render a decision for over 260 days from the filing of the complaint against Ms. Carter.
20. The investigation did not find any acts of discrimination by Ms. Carter.
21. Ms. Carter has a religiously diverse client base that includes Jews, Muslims, Buddhists, Catholics, and Evangelical Christians.
22. Ms. Carter was removed from the VREB complaint on May 4, 2018.
23. Ms. Carter was informed by Ms. Edwards and Michael Maloney (the owner of Midlothian) on May 11, 2018 of a conciliation agreement between Edwards, Midlothian, and the VREB (attached as Exhibit B).
24. The terms of the conciliation agreement required that Midlothian prevent any of its employees from posting or including religious statements or material on any of their communications or advertising material.
25. The terms of the conciliation agreement further require that Midlothian report to the VREB any individual who resigns their position due to the restriction on religious material, as well as the name of their new broker.
26. Ms. Edwards stated to Ms. Carter that she did not personally agree with the terms of the conciliation agreement but was compelled to accept them based on the circumstances.
27. Due to Defendant's restrictions upon her religious speech and practice, Ms. Carter resigned

from her position at Midlothian.

28. Ms. Edwards and Michael Maloney told Ms. Carter that the VREB warned them that they were going to track Ms. Carter's license, and will file another complaint against her if she re-adds her previous religious statements to her communications and website.

29. Ms. Carter has referred clients to other real estate agents since the complaint was filed in August 2017.

30. Ms. Carter fears making religious statements in connection with her realty practice because of possible action by the Board.

31. Because of the restrictions placed on her free speech, Ms. Carter has not actively practiced realty since the complaint was filed against her in August of 2017.

Grounds for Declaratory Judgment

32. An actual controversy has arisen between Ms. Carter and Defendant because the Defendant's prior Complaint and subsequent actions require Ms. Carter to refrain from religiously motivated speech and conduct and negatively affect her livelihood as a Christian real estate agent.

33. Defendant's prior Complaint and subsequent actions constitute a prior restraint that has a chilling effect on Ms. Carter's free speech protected by the First Amendment to the United States Constitution and Article One, Sections Eleven, Twelve, and Sixteen of the Virginia Constitution.

34. Defendant's prior Complaint and subsequent actions threaten Ms. Carter's religious liberty as protected by Article 1, Sections 11, 12, and 16 of the Virginia Constitution and the First Amendment to the United States Constitution as well as Virginia Code § 57-2.02(B).

35. Defendant's prior Complaint and subsequent actions restrict Ms. Carter's due process rights protected by Article 1, Section 11 of the Virginia Constitution and the Fourteenth Amendment to the United States Constitution.

CAUSES OF ACTION

Count I

The Prima Facie Language in Virginia Code § 36-96.3(A)(3) Violates Ms. Carter's Right to the Free Exercise of Religion, as Protected by Virginia Constitution Article One, Section Sixteen and Virginia Code § 57-2.02

36. The foregoing averments are hereby incorporated by reference.
37. Under Virginia Code § 57-2.02(B), if a person's free exercise has been substantially burdened, a governing body must prove that there is a compelling state interest and that it used the least restrictive means to achieve that interest in order to maintain that burden on free exercise.
38. Virginia Constitution Article I, Section 16 protects the free exercise of religion from undue government interference.
39. Defendant's policies and actions, and the presumption in Virginia Code § 36-96.3(A)(3), violate Ms. Carter's right to free exercise of religion, contrary to Virginia Constitution Article One, Section Sixteen and Virginia Code § 57-2.02.
40. Ms. Carter's free exercise has been substantially burdened through her inability to speak about her faith.
41. The prima facie presumption in Virginia Code § 36-96.3(A)(3) is not the least restrictive means to achieve any compelling governmental interest.
42. Ms. Carter has no adequate remedy at law to correct the continuing deprivation of her right to the free exercise of religion guaranteed by Virginia Constitution Article One, Section Sixteen and Virginia Code § 57-2.02.

Count II

The Defendant Violated Ms. Carter's Virginia Constitution Article 1, Section 11 Right to be Free From Government Discrimination

43. The foregoing averments in paragraphs 1-35 are hereby incorporated by reference.
44. The Defendant's application of the prima facie presumption in Virginia Code § 36-96.3(A)(3) discriminated against Ms. Carter on the basis of her religious convictions.
45. The Defendant's conciliation agreement with Midlothian discriminates against Ms. Carter on the basis of her religious convictions and practice by not allowing Ms. Carter to use any statements of faith in her work environment, by requiring Midlothian to report realtors who resign because of their religious convictions, and by requiring Midlothian to report that Ms. Carter resigned for religious reasons.
46. Ms. Carter has no adequate remedy at law to correct the continuing deprivation of her right of protection from government discrimination upon the basis of religious conviction guaranteed by Article 1, Section 11 of the Virginia Constitution.

Count III

The Prima Facie Presumption in Virginia Code § 36-96.3(A)(3) Violates Ms. Carter's First Amendment Right to Free Speech Under the Virginia Constitution, Article One, Section Twelve

47. The foregoing averments in paragraphs 1-35 are hereby incorporated by reference.
48. As a government body, the Defendant may not preemptively restrict constitutionally protected speech.
49. Through the prima facie presumption in Virginia Code § 36-96.3(A)(3), and enforcement of the same, the Defendant has imposed a prior restraint that prevents religious statements from being made by realtors in their marketing material.
50. Commercial speech is protected free speech under the First Amendment.

51. Content-based restrictions on free speech are unconstitutional if they lack a substantial governmental interest and are not narrowly tailored to achieve said purpose.

52. The *prima facie* presumption in Virginia Code § 36-96.3(A)(3) is not the least restrictive means to prevent discriminatory speech.

53. The *prima facie* presumption in Virginia Code § 36-96.3(A)(3) creates a content-based restriction by disfavoring speech with a particular content.

54. *Prima facie* presumptions may not be used to forbid constitutionally protected expression. *Prima facie* presumptions do not distinguish between different intents as informed by the context of the speech.

55. Virginia Code § 36-96.3(A)(3) has a chilling effect on free speech as it restricts discriminatory as well as nondiscriminatory speech without distinction of intent.

56. Ms. Carter has no adequate remedy at law to correct the continuing deprivation of her constitutional right to freedom of speech guaranteed by the Virginia Constitution, Article One, Section Twelve.

Count IV

The Prima Facie Presumption in Virginia Code § 36-96.3(A)(3) Violates Ms. Carter's First Amendment Right to Free Speech Under the U.S. Constitution, on its Face and As Applied to Ms. Carter, and Acts as a Prior Restraint on Free Speech

57. The foregoing averments in paragraphs 1-35 are hereby incorporated by reference.

58. As a government body, the Defendant may not preemptively restrict constitutionally protected speech.

59. Through the *prima facie* presumption in Virginia Code § 36-96.3(A)(3), and enforcement of the same, the Defendant has imposed a prior restraint that prevents religious statements from being made by realtors in their marketing material.

60. Commercial speech is protected free speech under the First Amendment.

61. Content-based restrictions on free speech are unconstitutional if they lack a substantial governmental interest and are not narrowly tailored to achieve said purpose.

62. The *prima facie* presumption in Virginia Code § 36-96.3(A)(3) is not the least restrictive means to prevent discriminatory speech.

63. The *prima facie* presumption in Virginia Code § 36-96.3(A)(3) creates a content-based restriction by disfavoring speech with a particular content.

64. *Prima facie* presumptions may not be used to forbid constitutionally protected expression. *Prima facie* presumptions do not distinguish between different intents as informed by the context of the speech.

65. Virginia Code § 36-96.3(A)(3) has a chilling effect on free speech as it restricts discriminatory as well as nondiscriminatory speech without distinction of intent.

66. Ms. Carter has no adequate remedy at law to correct the continuing deprivation of her constitutional right to freedom of speech guaranteed by the First Amendment of the United States Constitution.

Count V

The Prima Facie Presumption in Virginia Code § 36-96.3(A)(3) Violates Ms. Carter's First Amendment Right to the Free Exercise of Religion

67. The foregoing averments in paragraphs 1-35 are hereby incorporated by reference.

68. When a law is not neutral or generally applicable, the governing body may only restrict a person's free exercise if it can prove that there is a compelling governmental interest and that it achieved the interest through the least restrictive means.

69. The *prima facie* presumption of Virginia Code § 36-96.3(A)(3) is not neutral.

70. The *prima facie* presumption of Virginia Code § 36-96.3(A)(3) is not generally applicable.

The *prima facie* presumption of Virginia Code § 36-96.3(A)(3) is not the least restrictive means to

achieve a compelling governmental interest.

71. Ms. Carter has no adequate remedy at law to correct the continuing deprivation of her constitutional right to the free exercise of religion guaranteed by the First Amendment of the United States Constitution.

Count VI

The Prima Facie Presumption in Virginia Code § 36-96.3(A)(3) Violates Ms. Carter's First and Fourteenth Amendment Rights to Due Process

72. The foregoing averments in paragraphs 1-35 are hereby incorporated by reference.

73. For a presumption to be constitutional, there must be a "rational connection" between the facts needing to be proved and the fact presumed, and the fact presumed must be more likely than not to flow from the facts proven.

74. The presumption at issue in this matter requires only that the making of religious statements be proven.

75. The presumption at issue then permits a finding of discrimination from the act of making a religious statement.

76. There is no rational connection between discrimination and the mere fact of engaging in religious speech.

77. Discrimination is not more likely than not to flow from the making of any religious statement.

78. Ms. Carter has no adequate remedy at law to correct the continuing deprivation of her constitutional right to due process and freedom of expression guaranteed by the First and Fourteenth Amendments of the United States Constitution.

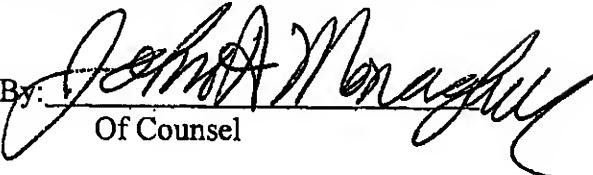
Prayer for Relief

WHEREFORE, Plaintiff Hadassah Hubbard Carter respectfully requests the following

relief:

- A) A preliminary and permanent injunction against Defendant, its agents, servants, employees, officials, or any other person acting in concert with Defendant or on its behalf, restraining them from enforcing customs, procedures, codes, practices and/or policies as they pertain to the conduct made the subject of this Complaint, specifically the discussed portion of Ms. Carter's personal statements of faith, or that in any way discriminate against Ms. Carter on the basis of her viewpoint or the content of her expression;
- B) A declaration stating that the conduct of Defendant and Defendant's policies restricting the rights of free speech, free exercise, and due process are unconstitutional and invalid both facially and as applied to Ms. Carter under Article One, Sections Eleven, Twelve, and Sixteen of the Virginia State Constitution, Virginia Code § 57-2.02, and the First and Fourteenth Amendments;
- C) That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;
- D) That this Court enter judgment declaring the rights of the Plaintiff, and grant Attorney fees and such other relief as the Court deems just and proper, for the reasons stated above.

HADASSAH HUBBARD CARTER,

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